U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: SEP 19 2013 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, the petitioner seeks employment as a "Special Education Teacher" for The petitioner worked at in from 2007 – 2011. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel; Reading results for and and public school progress reports for and .

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner has established that her work as a special educator is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner's work would be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. Assertions regarding the overall importance of an alien's area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYSDOT* at 220. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on December 20, 2011. In a December 14, 2011 letter accompanying the petition, counsel stated that the petitioner's "petition for waiver of labor certification is premised on her Master's Degree in Special Education, doctorate academic credits in Administration and Supervision, over twenty (20) years of dedicated and progressive teaching experience," and "the awards and recognitions received by her." Academic degrees, experience, and recognition such as awards are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (F), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act. The petitioner's awards and work as a special educator will be further discussed later in this decision.

The petitioner submitted a ten-page signed declaration discussing her teaching background, personal experiences, and educational philosophies. Regarding her employment situation, the petitioner stated:

> I did not seek other employment when I lost my job in [redacted]. It's like losing my option to achieve my "American Dream." As an experienced and qualified teacher in a specialty area, I could have had the opportunity to find another job and possibly have my H-1B status extended. Now my livelihood is in jeopardy, and I do not know what will happen to me. And then, this wonderful blessing of self-petition came.

The U.S. Department of Labor invoked the debarment provisions of section 212(n)(2)(C)(i) of the Act against [redacted] owing to certain immigration violations by that employer. As a result, between March 16, 2012 and March 15, 2014, USCIS cannot approve any employment-based immigrant or nonimmigrant petitions filed by [redacted].[1] This debarment means that [redacted] is, temporarily, unable to file its own petition on the alien's behalf, and thus explains why labor certification is not an option in the short term. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the alien will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT*, 22 I&N Dec. at 218 n.5. Any waiver must rest on the petitioner's individual qualifications, rather than on the circumstances that (temporarily) prevent [redacted] from filing a petition on her behalf.

---

[1] The list of debarred and disqualified employers is available on the U.S. Department of Labor's website. *See* http://www.dol.gov/whd/immigration/H1BDebarment.htm, accessed on August 5, 2013, copy incorporated into the record of proceeding.

In her signed declaration, the petitioner did not mention the *NYSDOT* guidelines or explain how she meets them. In addition, the petitioner did not indicate that her work as a teacher has had an impact beyond the schools where she has taught. With regard to the petitioner's special education work for [redacted], there is no evidence establishing that the benefits of her work would extend beyond the school system such that they might have a national impact. *NYSDOT*, 22 I&N Dec. at 217, n.3. provides examples of employment where the benefits would not be national in scope:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

In the present matter, the benefits of the petitioner's impact as a special educator would be limited to students at her school and, therefore, so attenuated at the national level as to be negligible. In addition, the record lacks specific examples of how the petitioner's work as a special education teacher has influenced the education field on a national level. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner submitted various letters of support from administrators, teachers, former students, and parents discussing her work as an educator. As some of the letters contain redundant claims already addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

[redacted] Principal, [redacted], stated:

> [The petitioner] has been with us since August of 2007 and since then her performance has been satisfactory.
>
> She is highly qualified and fully certified. She has consistently worked well with her students as well as with their parents. [The petitioner] has provided the students with the safe learning environment that they need, having a warm and pleasant personality that are required for students' sense of security and belongingness. Aside from being hard working, she has maintained positive intrapersonal and interpersonal qualities that contribute to a healthy working environment in our school.

[redacted] states that the petitioner's "performance has been satisfactory" and comments on the petitioner's teaching qualifications and personal attributes, but [redacted] does not indicate that the

petitioner's work has had, or will continue to have, an impact beyond the students under her tutelage and the local school system that employed her.

[redacted], Assistant Principal, [redacted], stated:

> I have had the pleasure of working with [the petitioner] this past school year as her supervisor. She was a true educated [sic]. She worked extremely hard and planned thoroughly in writing by way of her plans and the appearance of classroom. The teacher planned activities for her students which showed her expertise as well as her knowledge of the curriculum. [The petitioner] often spent extra time in her classroom preparing as well as meeting with her team in the best interest in her students.
>
> [The petitioner] was a creative and always worked hard to ensure her student's IEP [Individualized Education Program] goals were met. She differentiated instruction for each student which showed through the student's progress. [The petitioner] was a very caring and dependable teacher. She had a good working relationship with her parents. She made sure her parents were knowledgeable about the student's education progress.
>
> [The petitioner] was always prepared for her students and in meetings. She always turned documents on time. She was involved in the school community and not just her classroom. She attended PTA meetings and other school functions. [The petitioner] was a true asset to our school building and she will truly be missed. I wish her the best in her next educational setting.

[redacted] comments on the petitioner's activities as a teacher at [redacted] but [redacted] does not indicate how the petitioner's impact or influence as a special educator is national in scope.

[redacted], Comprehensive Special Education Coordinator, [redacted], stated:

> [The petitioner] was a teacher in the Comprehensive Special Education Program at [redacted]. [The petitioner] has been a great asset over the past several years working as a Kindergarten teacher in a self-contained classroom. [The petitioner] has done an outstanding job teaching students with various needs. She has shown her ability to design and implement lessons that meet the needs of her students.
>
> [The petitioner] was a very important member of our school team. She was an active member of the Kindergarten collaborative planning team, analyzing student data and helping to design lessons. She is respected by her team members and always has a friendly and professional demeanor. [The petitioner] meets all timelines for everything she is asked to do. She has consistent communication with parents both by phone and email. The parents of our school community speak very highly of [the petitioner] and all she does for their children.

[redacted] discusses the petitioner's work as a Kindergarten teacher at [redacted] but [redacted] fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

[redacted] teacher and former Instructional Coach for Reading, [redacted], stated:

> [The petitioner's] commitment to raise the achievement level of students was demonstrated with tenacity and a commendable work ethic. Under her tutelage CSEP (Comprehensive Special Education Program) students consistently demonstrated significant improvements on the county mandated DRA (Developmental Reading Assessment).
>
> Additionally, [the petitioner] exhibited impeccable leadership skills and problem solving abilities. She was an integral and respected member of the Kindergarten team and routinely shared best instructional practices to benefit struggling learners. She incorporated research-based strategies into the instructional program to ensure that students had multiple pathways to learning, and opportunities to show growth.
>
> The [redacted] family continues to value and appreciate her deeply.

[redacted] asserts that students under the petitioner's tutelage have demonstrated significant improvements on the county mandated DRA and she comments on the petitioner's effectiveness as an educator, but [redacted] comments do not set the petitioner apart from other competent and qualified teachers, or explain how the petitioner's work has impacted the field beyond her students at [redacted].

[redacted], Grade Level Chairperson, [redacted], stated:

> With regards to ambition, [the petitioner] committed herself to developing and excelling both personally and professionally. She obtained several certifications and participated in numerous trainings at the school and within the county. Some of the trainings included but were not limited to: classroom management skills, motivating students, improving student achievement, preparing children for a technologically advanced future, individualized instruction, leadership development, positive behavior intervention support, and Corner training. [The petitioner] was able to complete all of the above, while maintaining her noteworthy reputation as an outstanding teacher among her peers, a role model to her students, an example of reference for administration, and a teacher in demand by parents.

[redacted] comments on training courses taken by the petitioner, but any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for alien labor certification. *NYSDOT* at 220-221. As previously discussed, special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-

trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

, a teacher at , stated:

> [The petitioner] has been my co-teacher at since August, 2007. I remember vividly that she came to my classroom on her 1st day at and I immediately took the liking of her. She tried to help me put up my classroom and she was very appreciative of the preparation I made for my students. I saw that she was easy to work with and she was very generous in sharing her knowledge and expertise in the field of teaching and learning.
>
> It was a privilege when my students had the chance to have her as their mentor in Reading and Math when she volunteered for the after school program (without pay). They learned fast with her because they, too, loved her immediately. She praised and rewarded them for their work and efforts and the students felt good going to her class.

comments on the petitioner's work as a teacher, a reading and math mentor, and an after-school volunteer at but does not indicate how the petitioner's impact or influence as an educator is national in scope.

, Comprehensive Special Education Teacher, stated:

> This is to certify that I have known and worked with [the petitioner] as teachers of for 4 years. She has been a significant aspect in my profession as she has served to be my mentor in Lesson Planning Design and its implementation. She had in many ways enhanced my methods and style in teaching as I would really sit down with her and she would share strategies that she uses to improve student performance, most especially in reading and math.
>
> She is an excellent team player who respects and adheres to our team's combined efforts and common benefits and to those of our kids as a whole. She's a fast worker, comfortable and fun to work with.
>
> Her students last year are my students now and they have truly shown the product of her success in building their foundation as a person, as young as they are with respect and love.

indicates that the petitioner was an effective mentor and team player at , but fails to provide specific examples of how the petitioner's work as a teacher has influenced the field as a whole.

Director, stated:

> [The petitioner] has been a great asset to our school especially because she establishes very good rapport with the students and their parents. In effect, the students love to attend school and learn from her fast. In the Performing Arts, she taught reading and language arts where the measure of the student's skills and abilities were put to a challenge in a TV Show, a Cultural Show or a Talent Show. Endowed with the gift for this kind of job, I empowered her to produce her own show with her students. And true to the expectancy of success, she produced successful happy kids and contented parents that we had to let her continue what she had started until she left for a work abroad.

[redacted] comments on the petitioner's activities as a teacher at [redacted] but [redacted] fails to explain how the petitioner's work has impacted the field beyond the school.

[redacted] Chair, Teacher Education Department, [redacted] stated:

> As Chair of the Teacher Education Department (TED) of the [redacted] during the academic years, 1995 - 2001, I have worked closely with [the petitioner] as one of our instructors in [redacted] and as an [redacted]. She has been very supportive in all the programs of the department particularly in the training of our students as prospective teachers.
>
> Furthermore, I have observed that our students are very comfortable with her as she manifests kindness, dedication, and understanding in carrying out her functions with them and with other subordinates.
>
> Her further studies in Special Education and experiences in teaching different subjects in our university and in other schools will definitely optimize her assets for the benefit of other institutions.

[redacted] comments on the petitioner's work as an instructor at the [redacted], but [redacted] does not explain how the petitioner's work has influenced the education field on a national level.

[redacted], International Baccalaureate Diploma Program Coordinator, [redacted], stated:

> [The petitioner] had been my professor in college at the [redacted], Teacher Education Department. As a professor, she only did not impart great lessons but she has also inspired me to be a successful teacher at that point where I wasn't sure whether being a teacher was my calling.
>
> As a professor, she would always make our classes very fun and friendly where everyone is encouraged to be himself or herself and maximized our potentials. Lessons learned from her

> classes are very practical and comes very handy now that I am a full-fledged educator myself. She had organized trips outside the city to let us see the real world of teaching. We had immersion trips that made learning even better.
>
> Beyond the four walls of the classrooms, she was also very supportive with our extra-curricular activities. Being a student leader in college, [the petitioner] would give us great advice and would never fail to encourage us to make leading and being a leader more fruitful.

The letters from [redacted] and [redacted] provide information relating to the petitioner's work teaching college courses at the [redacted] but they fail to provide specific examples of how the petitioner's work has influenced the field beyond her activities at the university. Regardless, the record does not indicate that the petitioner continues to perform similar activities in a university setting in the United States. The petitioner's past duties on a university's faculty are not necessarily a reliable guide for what the petitioner will do as a [redacted] special education teacher.

The preceding references praise the petitioner's teaching abilities and personal character, but they did not demonstrate that the petitioner's work has had an impact or influence outside of the schools where she has worked. They did not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *NYSDOT* at 217 n.3.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

The petitioner submitted the following:

1. Teaching licenses for the State of New Mexico;

2. A Maryland Educator Certificate;
3. Certificates of Membership for the
4. Certificates of Recognition from the
5. Certificates of Appreciation from the
6. Certificates of Recognition from
7. Certificate of Recognition from
8. Certificates of Appreciation from
9. Certificates of Recognition from
10. Certificates of Appreciation from
11. Certificate of Appreciation from the for giving a lecture at the
12. Certificate of Appreciation from the for being a resource speaker at the
13. Certificate of Appreciation from the ;
14. Certificates of Appreciation from the for facilitating the program "
15. Certificate of Appreciation from the for ; and
16. Certificates of Recognition, Appreciation, Acknowledgement, and Support for donations to various charitable causes.

Licenses, professional certifications, membership in professional associations, and recognition for achievements are all elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(C), (E), and (F), respectively. As noted previously, exceptional ability in the sciences, the arts or business is not sufficient to warrant the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including alien employment certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has failed to demonstrate that the awards she received have more than local or institutional significance. For instance, the petitioner's Certificates of Appreciation from the reflect institutional recognition from the local chapter for giving presentations to her colleagues rather than nationally significant awards in the field of education. There is no documentary evidence showing that items 1 – 16 are indicative of the petitioner's influence on the field of education at the national level.

The petitioner submitted copies of her "satisfactory" teacher evaluations from . The petitioner, however, did not submit documentary evidence indicating that she has impacted the field to a substantially greater degree than other similary qualified special education teachers. Moreover,

there is no evidence showing that the petitioner's specific work has had significant impact outside of the schools where she has taught.

The petitioner submitted numerous certificates of participation, completion, and attendance for training courses, seminars, and workshops relating to her professional development. While taking courses and attending seminars and workshops are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

The petitioner submitted photographs of her presentations, teaching activities, interactions with students and parents, and workshop participation, but there is no documentary evidence showing that any of her original methodologies were implemented outside of Maryland, or that her work otherwise influenced the education field as a whole.

The director issued a request for evidence, instructing the petitioner to submit evidence to establish that the benefits of her proposed employment would be national in scope and that she "has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submitted President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990"; information about Public Law 94-142; a copy the Supreme Court decision in *Brown v. Board of Education*, 347 U.S. 483 (1954); a copy of Section 1119 of the NCLBA; a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; and a September 26, 2011 article in *Education Week* entitled "Shortage of Special Education Teachers Includes Their Teachers." As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field. *NYSDOT*, 22 I&N Dec. at 217. While such arguments and information address the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test, none of the preceding documents demonstrate that the petitioner's specific work as a special educator has influenced the field as a whole.

In a September 5, 2012 letter, counsel stated:

> Since a 'National Special Education Teacher' is not even a real concept but more of metaphysical cognition [sic], undersigned wishes to once again posit a realistic proposition upon which to establish that the self-petitioner's contributions will impart national-level benefits.
>
> Even authors of books, treatises and other academic materials on Special Education are not in any standing [sic] to claim that their contributions are national in scope since not all special education teachers can be said to utilize their works.

> Further, the curriculums used by each state education department in the United States vary from each other.
>
> In other words, since not all NIW cases are based on prevailing Acts of United States Congress, it is but harmless to assert that if an NIW Petition is made with premise on some prevailing Acts of United States Congress, that by itself renders the proposed employment national in scope. But in those cases that are not premised on any prevailing Act of United States Congress, NIW self-petitioners must meet the issue on other bases.

The director did not state that the petitioner had to show that she is "a 'National Special Education Teacher,'" or that "all special education teachers . . . utilize [her] works." National scope is not the same as universal reliance on the petitioner's work. Moreover, all employment-based immigrant classifications are based on "prevailing Acts of United States Congress," and so is the statutory job offer requirement. There is no basis to conclude that Congress, by mentioning a given occupation in a particular piece of legislation, exempted aliens in that occupation from the job offer requirement.

Counsel quoted remarks made by then-President George H.W. Bush when he signed the Immigration Act of 1990, which created the national interest waiver: "This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas." Counsel interprets this passage to mean that Congress created the national interest waiver for educators. The Immigration Act of 1990, however, was not restricted to the creation of the waiver. It was, rather, an overhaul of the entire immigration structure, creating new employment-based immigrant classifications to replace the "third preference" and "sixth preference" classifications previously in place. "[S]cientists and engineers and educators" are all members of the professions who, under the terms dictated by Congress in the Immigration Act of 1990 (as it amended the Act), are all subject to the job offer requirement.

Counsel cited various statutes, policy initiatives, and *Brown v. Board of Education*, 347 U.S. 483 (1954), all of which affirmed the value of education, but none of which exempted teachers from the job offer requirement at section 203(b)(2)(A) of the Act. The undeniable importance of education is not sufficient to establish the petitioner's eligibility for a national interest waiver. *See NYSDOT* at 220. Moreover, none of the provisions mentioned by counsel specifically established a blanket waiver for foreign special education teachers.

Following the issuance of *NYSDOT* in 1998, Congress has enacted only one statutory change in direct response to that precedent decision. Specifically, Congress added section 203(b)(2)(B)(ii) to the Act, creating special waiver provisions for certain physicians. Those provisions do not apply in this proceeding. Therefore, *NYSDOT* provides the controlling guidance in the present matter. Counsel did not show that the other statutory provisions he cited indirectly imply the petitioner's eligibility for the waiver, even though those provisions never mention the waiver directly.

Counsel stated that the labor certification requirement is deficient because, for labor certification purposes, the U.S. Department of Labor considers a bachelor's degree, rather than a master's degree

and experience, to be the minimum educational requirement for a special education teacher. The petitioner submitted information from the *Occupational Outlook Handbook* describing what the U.S. Department of Labor considers to be the minimum qualifications necessary to become a special education teacher:

> Public school teachers are required to have a least a bachelor's degree and a state-issued certification or license.
>
> * * *
>
> Education
>
> All states require public special education teachers to have at least a bachelor's degree. Some of these teachers major in elementary education or a content area, such as math or chemistry, and minor in special education. Others get a degree specifically in special education.
>
> * * *
>
> Some states require special education teachers to earn a master's degree in special education after earning their teaching certification.
>
> * * *
>
> Licenses
>
> All states require teachers in public schools to be licensed. A license is frequently referred to as a certification.
>
> * * *
>
> Requirements for certification vary by state. However, all states require at least a bachelor's degree. They also require completing a teacher preparation program and supervised experience in teaching, which is typically gained through student teaching. Some states require a minimum grade point average.
>
> Many states offer general special education licenses that allow teachers to work with students across a variety of disability categories. Others license different specialties within special education.
>
> Teachers are often required to complete annual professional development classes to keep their license. Most states require teachers to pass a background check. Some states require teachers to complete a master's degree after receiving their certification.

> Some states allow special education teachers to transfer their licenses from another state. However, some states require even an experienced teacher to pass their own licensing requirements.
>
> All states offer an alternative route to certification for people who already have a bachelor's degree but lack the education courses required for certification. Some alternative certification programs allow candidates to begin teaching immediately, under the close supervision of an experienced teacher.

Counsel asserts that the No Child Left Behind Act (NCLBA), 20 U.S.C. § 6314(b)(1)(C), requires employment of highly qualified teachers and that the national interest would not be served if the petitioner was required to obtain labor certification for her proposed employment. Section 9101(23) of the NCLBA defines the term "Highly Qualified Teacher." Briefly, by the statutory definition, a "Highly Qualified" elementary school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor's degree; and
- has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum, or (in the case of experienced teachers not "new to the profession") demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation.

Section 9101(23)(A)(ii) of the NCLBA further indicates that a teacher is not "Highly Qualified" if he or she has "had certification or licensure requirements waived on an emergency, temporary, or provisional basis."

Counsel contends that the labor certification process "would not meet the objective of the employer to hire highly qualified teachers pursuant to No Child Left Behind" because the labor certification process requires only a bachelor's degree. Section 1114(b)(1)(C) of the NCLBA dictates that "[a] schoolwide program shall include . . . [i]nstruction by highly qualified teachers." The regulation at 34 C.F.R. § 200.56 defines the term "highly qualified teacher," and the regulation at 34 C.F.R. § 300.18 lists supplementary requirements for "highly qualified special education teachers." The petitioner has not established that the "Highly Qualified" standard involves requirements that are significantly more stringent than those outlined in the *Occupational Outlook Handbook*, or that a public school could not obtain a labor certification for a "Highly Qualified Teacher." Thus, the petitioner's level of education and experience are not required for "highly qualified" status under the NCLBA. Counsel, therefore, did not support the claim that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers."

In addition, counsel did not discuss the regulations at 34 C.F.R. § 200.56 and § 300.18 or Maryland's state-specific requirements, or cite any evidence to show that the labor certification

process does not permit the hiring of "highly qualified teachers." If, by law, a teacher must be "highly qualified," then a teacher who does not meet the applicable requirements is not "minimally qualified." Rather, that teacher is underqualified or unqualified. Counsel has not shown that the labor certification process has forced or any other Maryland jurisdiction to hire teachers who do not meet the requirements of "highly qualified teachers." Rather, because "highly qualified" is statutory standard for such teachers, that term appears to be functionally equivalent to the term "minimally qualified" for purposes of labor certification.

Counsel stated that "unquantifiable factors that zero in on 'passion'" distinguish the petitioner from qualified United States workers and that labor certification cannot take these factors into account, but the record contains no evidence to support the claims. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel cited a study showing that special education teachers "shift careers" and move to general education, and therefore "[t]he protection afforded for U.S. workers enshrined in the labor certification process will not in any way be jeopardized by grant of waiver in favor of" the petitioner. In addition, counsel cited another study indicating the percentages of special educators who are fully certified who hold master's degrees. The classification sought, however, was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *Id.* at 221. The statutory standard is that the waiver will serve the national interest, and counsel's observations do not address that standard.

Counsel contended that, under the NCLBA, schools that fail to meet specified benchmarks will lose federal funding and be "abolished," thereby putting teachers out of work. Counsel offers no specific example of this situation ever happening. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Counsel asserted that by waiving the labor certification requirement for highly qualified special educators such as the petitioner, "more American teachers will have employment opportunities" because standards will be met and schools will not be abolished. However, neither the Immigration and Nationality Act nor the NCLBA, separately or in combination, create or imply any blanket waiver for highly qualified foreign teachers.

The director denied the petition on December 19, 2012. The director found that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States. The director indicated that the petitioner had not shown that her work as a special education teacher would be national in scope. In addition, the director stated the petitioner had not demonstrated a record of past achievements with "some degree of influence on the field as a whole."

On appeal, counsel asserts that "USCIS erred in giving insufficient weight to the national educational interests enunciated in the No Child Left Behind Act of 2001." Counsel, however, does not point to any specific legislative or regulatory provisions in the NCLBA that exempt foreign school teachers from *NYSDOT* or reduce its impact on them. It is within Congress's power to establish a blanket waiver for teachers, "highly qualified" or otherwise, but contrary to counsel's assertions, that waiver does not yet exist. With regard to following the guidelines set forth in *NYSDOT*, by law, the USCIS does not have the discretion to reject published precedent. *See* 8 C.F.R. § 103.3(c), which indicates that precedent decisions are binding on all USCIS officers.

Counsel again cites the NCLBA and other government initiatives to reform and improve public education. Counsel asserts that section 203(b)(2)(B)(i) of the Act does not contain clear guidance on eligibility for the waiver, and claims that Congress subsequently filled that gap with the passage of the NCLBA. Counsel notes that Congress passed the NCLBA three years after the issuance of *NYSDOT* as a precedent decision, and claims that "[t]he obscurity in the law that *NYSDOT* sought to address has been clarified," because "Congress has spelled out the national interest with respect to public elementary and secondary school education" through such legislation. Counsel, however, identifies no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them.

Counsel also does not support the assertion that the NCLBA modified or superseded *NYSDOT*; that legislation did not amend section 203(b)(2) of the Act. Once again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not shown that the NCLBA indirectly implies a similar legislative change.

Counsel further states:

> With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: "Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the **national . . . educational interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, highlights the phrase "national . . . educational interests," but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien's "services . . . are sought by an employer in the United States." Counsel has, thus, directly quoted the statute that supports the director's conclusion. By the plain language of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer

requirement, even if that alien "will substantially benefit prospectively the national . . . educational interests . . . of the United States." Neither the Immigration and Nationality Act nor the NCLBA, separately or in combination, create or imply any blanket waiver for foreign teachers.

Counsel asserts that the benefit arising from the petitioner's work is national in scope because of the "national priority goal of closing the achievement gap." The record, however, contains no evidence that the petitioner's efforts have significantly closed that gap. The national importance of "education" as a concept, or "educators" as a class, does not establish that the work of one teacher produces benefits that are national in scope. *See NYSDOT* at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Counsel continues:

> The national priority goal of closing the achievement gaps between minority and nonminority students, and between disadvantaged and more advantaged children is especially relevant in the context of and . The MSA [Maryland State Assessment] Reading results show that out of the 24 Maryland school districts ranked near the bottom at the 'All Student' level for each MSA-covered grade level . . . .
>
> * * *
>
> Additionally, it is noteworthy that the updated shows that lid not meet its Reading proficiency AMO targets . . . .

The petitioner's appellate submission includes Maryland School Assessment (MSA) Reading results for and , and public school progress reports for and . The petitioner worked for from 2007 – 2011, and thus had been there for a number of years before the administration of the MSA tests. Counsel fails to explain how the MSA results for (which indicate low rankings relative to other Maryland school districts) establish that the petitioner has played an effective role in "closing the achievement gap."

Counsel states that the petitioner "is an effective teacher in raising student achievement in STEM" (science, technology, engineering and mathematics), but he cited no documentary evidence to support that claim. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In addition, while counsel asserts that the petitioner has "proven success in raising proficiency of her students," he did not point to specific STEM test results or other documentary evidence in the record to support the assertion. Regardless, there is no documentation demonstrating that the petitioner has had an impact or influence outside of or

Counsel asserts that the director "erred in his appreciation of petitioner's past achievement," but counsel fails to point to specific evidence in the record showing that the petitioner's work has had a national impact or has otherwise influenced the field as a whole.

Counsel states that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers and that USCIS "should have presented its own comparable worker." Counsel's contention rests on the incorrect assumption that the *NYSDOT* guidelines amount to little more than an item-by-item comparison of an alien's credentials with those of qualified United States workers. The key provision, however, is that the petitioner must establish a record of influence on the field as a whole. Moreover, there is no provision in the statute, regulations, or *NYSDOT* requiring the director to specifically identify another equally qualified special educator. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Counsel claims: "the Immigration Service is requiring more from the beneficiary's credentials and tantamount to having exceptional ability," even though one need not qualify as an alien of exceptional ability in order to receive the waiver. As previously discussed, the requirements for exceptional ability are separate from the threshold for the national interest waiver. It remains that the petitioner's evidence does not facially establish eligibility for the national interest waiver. The director did not require the petitioner to establish exceptional ability in her field. Instead, the director observed that the petitioner's evidence does not show that the petitioner's work has had an influence beyond the school district where she has worked.

Counsel cites to several studies pointing to a high turnover rate among special education teachers. As previously discussed, a shortage of qualified workers in a given field is an issue that falls under the jurisdiction of the Department of Labor through the alien employment certification process. *NYSDOT* at 221.

Counsel states that the labor certification guidelines "require only a bachelor's degree," and therefore "may not meet the objective of employers to hire highly qualified teachers pursuant to No Child Left Behind." On page 14 of the appellate brief, however, counsel acknowledges that the statutory definition of a "Highly Qualified Teacher" requires only a bachelor's degree. Counsel does not reconcile these contradictory claims.

Counsel asserts that a waiver would ultimately serve the interests of United States teachers, because if schools "fail to meet the high standard required under the No Child Left Behind (NCLB) Law," the result would be "not only . . . closure of these schools but [also] loss of work for those working in those schools." Again, counsel does not document "closure of . . . schools" for failing to meet NCLBA requirements, and the record does not show that the petitioner's work has brought PGCPS schools closer to meeting the NCLBA requirements.

Much of the appellate brief consists of general statements about educational reform and discussion of perceived flaws in the labor certification process. The petitioner, however, has not established that Congress intended the national interest waiver to serve as a blanket waiver for special education teachers. It is the position of USCIS to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *NYSDOT* at 217.

It is evident from a plain reading of the statute that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *Id.* at 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole."). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende* at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.